

2/13 1/2  
A  
**FREE ENQUIRY**

INTO

**THE ENORMOUS INCREASE**

OF

**A T T O R N I E S,**

WITH

**SOME SERIOUS REFLECTIONS ON THE ABUSE  
OF OUR EXCELLENT LAWS.**

*By an unfeigned Admirer of genuine British  
Jurisprudence.*

AND

**A P O S T S C R I P T,**

**In which the Reform of our Parliamentary  
Constituency is again considered,**

*By the Original Proposer of that Interesting Measure.*

---

**L O N D O N :**

**PRINTED FOR J. DEBRETT, OPPOSITE BURLINGTON-  
HOUSE, PICCADILLY. 1785.**

1092

FREE ENQUIRY

IN TWO

VOLUMES THE ENORMOUS INCREASE

OF

ATTORNEYS

WITH

SOME SERIOUS REFLECTIONS ON THE ABUSE  
OF OUR EXCELLENT LAWS.

(By an experienced Attorney at Law, of the County of Middlesex.)

1846

735

A POSTSCRIPT

In which the Author has inserted some additional Remarks on the subject of the late case of the Attorney General v. the Lord of the Manor of the County of Middlesex.



LONDON

PRINTED FOR J. JOHNSON, ST. PAUL'S CHURCH-YARD, LONDON.

T O

JOHN SAWBRIDGE, Esq.

**A** PLAIN-SAILING Man like you, is as much above the flimsy Cant of false Compliment, as I am myself an Enemy to it. Can it then, be out of Character, to address the following sheets, to a tried and hearty Patriot, in the familiar Phrase, of our boisterous Myrmidons of the British Navy? Were I to call you, the only Virtuous and Steady Man in these extensive Dominions, your honest Heart, judging more candidly of the Republic, would be justly offended, both at the censorious supposition, and at my absurdly labouring

bouring for so very lost a People,  
as that Idea would imply.

I will therefore content myself  
with barely saying, that, from the  
long and steady Services of Mr.  
SAWBRIDGE in promoting the public  
Welfare, it may without Flattery  
be concluded, there is no worthier.

I have the honour to be,  
With the most perfect Consideration,

SIR,

Your very Obedient Servant,

THE AUTHOR.



# FREE ENQUIRY,

මු. මු. මු.

**I**T has been long the boasted Pride of Britons, to be governed solely by Laws of their own framing, but if that Pride has much abated, since they have been brought to reflect, that not one sixth part of their fellow Countrymen, has been consulted in the Election of their legislative Body : what indeed, must be their Humiliation ! when they are told, however inconsistent it may appear with the liberal Spirit and unimpeached good Sense of the English Nation ; that it is yet evident, from the unremit-

B ting

ting Tenor of historical Facts, that it has continued by some strange Fatality, even from the obscure Times of its Druid Thralldom, ever under the Influence of some oppressive *Incubus*.—It was for many Centuries prior to our first William's Invasion, Conquest-ridden.—Very soon after that famous Period, it was still more heavily Priest-ridden. Under the Tudor Family, it was most egregiously Tyrant-ridden. For a short Space, it was pretty roughly ridden by Fanatics;—and I am sorry to observe that its present Inhabitants, have but too long groaned, under the ruthless Load and the oppressive Lash of Lawyers.

Should I be accused of cynically likening the Lawyer-ridden Country, to a mere Beast of Burthen, I can only say, that I am myself, unhappily involved, in the ridiculous Inference; being in no Degree connected with any of its present numerous Riders; and in atonement for having suggested the reproachful Idea, I will, by giving the Alarm to my oppressed Countrymen, put them on their Guard; trusting  
that

that a due Attention to their own faded Dignity, will after that, rouse them to the most earnest Efforts, and inspire them with sufficient Vigor, manfully to shake off this odious Burthen.

I would willingly, however, be thought unprejudiced on this Occasion, that is, so far from harbouring a hostile Wish, against the genuine, plain, essential Laws of this Land of Liberty, that I cannot hesitate to think the Man who does so, is either Idiot, or Enemy determined to all Society.

The Object of my Enmity, is not the Law, it is the wretched, quibbling, prostituted Habits of its Practicers, the expensive Grievance of its Formalities,—the Insolence and Roguery of its *Professors*, when they impudently reject fair Sense, unless delivered in the technical obsolete Jargon of a Special-pleader. The affected Zeal, but callous Indifference with which a hungry prowling Advocate, newly hired by a litigious Villain (like a blood-thirsty Brabançon gaping for Plunder, and eager to enlist on either side) deems himself venally bound,

even for a paltry Guinea, without the Merit of personal Risque ; not only to Brow-beat and indimidate an honest Witness, but basely to avail himself of a mere unguarded \* Informality, which shall yet ! defraud a worthy family of its right, and effect its Ruin. These destructive Nuisances, each of which I have unequivocally experienced, and others without Number, which I know exist : added to the insupportable Charge of a just, though for these Reasons *only*, a precarious Suit : these, I say, are what every honest Man must of force join with me to reprobate, and what all lovers of their Country, should unite with one Heart radically to extirpate.

I would

\* As our *Common Law* is now practised, the equitable Merits, scarcely form an Object of Consideration : the prospect of a Flaw or *Informality* is all your Attorney or Counsel have in view : and indeed, all that can render the Suit precarious. They are so sensible of this, that where they happen to be Men of Reputation, they will, previous to Trial, frankly and confidently advise their Client, either to desist, or to pursue ; conformably to any accidental Discovery of Informality ; or, certainty of Preclusion in the preparatory Process on either Side.



I would commence this Augean Task, with the inferior Class of these devouring Locusts ; for *their* unlimited Existence, necessarily involves that, of a proportional Body of Counsel : let any Man then reflect with Temper if he can, on the many thousands of licensed and practising Attornies, now actually preying on the Vitals of their Country. And that, in bare-faced Evasion and Defiance, of repeated Statutes for their limitation. Their Number, inclusive of their Counsel, is, I think, computed at *twenty-four Thousand* : so that rating the yearly gain of each, at the very moderate Average of one hundred and thirty Pounds ; not to reckon the Mischiefs they create, and the loss of their real Services to the Community : their Annual Drain upon this distressed Country, considerably exceeds the enormous sum of THREE MILLION STERLING ! is not this serious ?

Can there be a more palpable proof, either of their Multitude, or of the widespread Mischiefs it has occasioned, than the oppressive Expedient that Men of Opulence  
are

are reduced to : that of retaining, in imitation of the first Tudor, each, an Empson or a Dudley, in the beginning, probably, for self-defence, against the petty-fogging Tribe? But too soon influenced by the rapacious suggestions of those subtle Guardians of their Property, they unwarily exposed their Tenants (for their own temporary Benefit, and that the Means of plundering them, might be *exclusively* reposed in one Person) to be racked and screwed up, at his merciless Discretion. And the Princely Fortunes rapidly realized by these Pests of Society, sufficiently proclaim the iniquitous Profits of their Stewardship.

Lawyers, it is urged, if you have Laws, are necessary to enforce them. Allowed, so in that Case are Hangmen, so is the Gallows. And would you therefore multiply them, like Lawyers, at least *fifty fold* upon the Face of your Country? would you therefore associate the one, into your Household? or adorn your Parks with the other?

Bur

But independent of this Reasoning, the Ravage of Attornies, is too widely and severely felt, not to be pretty generally acknowledged. Let us now examine, if the proportion of Counsellors, implied by this pestiferous Swarm, is not virtually a more dangerous, although a less ostensible Evil.

Setting aside the Study of Jurisprudence, it is impossible to read, and not admire the Commentaries of the late *Sir William Blackstone*: even should we consider their Author, in the Light of a mere speculative Antiquarian, giving us an accurate History of our Country's Laws; usefully and agreeably interspersed with moral and professional Observations as they occur; marking at once their Progress, and ingeniously connecting their Encrease and their Improvement, with that of Civilization, of Arts, of Science, and of Trade, out of which, they regularly grew.

After paying this well earned Tribute, to an excellent Writer, whom I could not but introduce, for the exemplary Elucidation of what I would wish to inculcate; I  
will

will beg leave to transcribe a Passage from the celebrated *Junius*: in which, his Conduct as a Senator and a Counsellor, is placed in glaring opposition to his Writings. These are his Words. “ The Doctor recollected  
 “ that he had a Place to preserve, though  
 “ he forgot that he had a Character to lose,  
 “ we have now the good fortune to know  
 “ the Doctor’s Principles, as well as his  
 “ Writings. For the Defence of Truth,  
 “ of Law, and of Reason, the Doctor’s  
 “ Book may safely be consulted, but, who-  
 “ ever wishes, to cheat a Neighbour of his  
 “ Estate, or to rob a County of its Rights,  
 “ need make no scruple of consulting the  
 “ Doctor himself.”

But, to proceed with *Sir William Blackstone*, who (notwithstanding the justice of this severe Censure has been since, loudly confirmed by Parliament, in the Reversal of its own Sentence on the Middlesex Election) was yet, surely, as honest and candid as the generality of his Profession; I cannot join, even his Writings in approving the Practice, of so frequently introducing  
 Counsel



Counsel into the Senate: that is, in these enlightened Times: for I readily admit that, in those early Days, when our martial though unlettered Sovereigns were themselves reduced to ratify or attest a public Act by the mere Signature or Impression of their *Mark* (and in ominous Compliment to the impending Power of the Clergy, that Mark was, as it has since continued, a Cross) in those Days I say, of Ecclesiastical Chancellorship, Lay Lawyers, might with safety, nay, with Advantage have been consulted.

It is the uniform Opinion of the ablest Writers upon Government, that to constitute an equitable and lasting one; the Parties charged with the important Trust of framing Laws, and those who have the (*lucrative*) Power of their Execution; should, for the most obvious Reasons be, totally unconnected and independent of each other. How far the English Nation has of late, acted in conformity to this wise Maxim, I may, without begging the Question, safely leave to be decided by any one,

C

that

that will look over the list, of both our Houses of Parliament. Adverting in particular, not only to that Profession, but, to those Dispositions and *Qualifications*, that have latterly, *rather often* led to Peerage.

Custom, in one of our ancient Adages, (which, however trite and familiar, are in general little short of oracular) is justly said to be, a second Nature. Its literal Sense, I consign to the Criticism of Logicians, but the Idea it is intended to convey, is, clearly, somewhat more than true: nay even Fashion, her younger, mimic Sister, has, in but few years Exertion of her Power, manifestly extinguished, even our national, natural Character. But, should the recollection of more manly Times, be unhappily obliterated by the present dissipated Scene; or, should the over-confident, still dispute the contagious Prevalence of Custom and Example: if their Arrogance place them not, above a Solon or Aristides, let them, but for a moment revert to the Annals of Ancient Greece, and the opprobrious Triumph of fashionable Vice, over the Wise, the Vir-  
tuous

tuous and the Valiant, nay over *Nature itself*! cannot fail to shock them, into the most humiliating Conviction.

With such manifested Proneness, and such imitative Aptitudes to Depravity, is there any Degree of it, that may not justly be apprehended in our Senates? from the rife Contagion of numerous Members, rankly tainted with the inveterate Habits of a Profession, which, to blazon it in the energetic Words of *Junius*, “is supported, by the indiscriminate Defence of right and wrong.” And for the Truth and accuracy of this Description, I willingly appeal; to the almost endless Catalogue of Causes, that have heretofore been tried in our Courts of Judicature. Wherein one side, tho’ *surely wrong*, yet as surely found an Attorney to maintain, and an Advocate to defend it: who had probably, well examined, at least his Client’s Pretensions: which mere Accident, that is, the prostituted Principles of his Profession, made it necessary for him to torture (not his callous Conscience,) but his Venal Faculties in the Defence of.—

Will any one be hardy enough to assert the probability of Men so abandoned, suddenly laying aside such rooted Habits?

But I should be myself unjust, if, believing a possible Remedy to exist, I were capable of suppressing any Argument, that might give Hopes of leading to it. Let us consider, then, if such Remedy may not be fairly deduced, from the rude, but acknowledged Practice of ancient Times: when the Defence of Causes (and they might still be, *legally* so defended) frequently took place, by Battle. It is sufficiently notorious, that the Champions were, *in that case*, on both sides *sworn*, and that, with every affecting solemnity, to their sincere belief in the Equity of their Clients Title: on which, as they were immediately proceeding, to the Hazard of Life and Reputation, we are fully justified in supposing, they confidently relied. I would now ask, if any specious Reason can be assigned, why, a modern \*

\* Were they in general actuated by the enlightened Probity, and noble Principles of an Erskine, or indeed, by any liberal one, this observation had been unnecessary.

Champion,



Champion, that is, an honest Advocate, should not, by an enforced Parity of Reasoning, equally be compelled to testify by Oath, his *unequivocal Belief*, not only of the legal, but of the *equitable* Title of his Client, e'er he be permitted to plead in a Defence, for which he is manifestly *hired*, and in which, no bodily Risque can possibly be incurred, whose Dread, might in the other Case, have alone secured his sincerity. Does the unimpeached Integrity of our modern Counsel, render the Oath superfluous? or, are we scrupulously tender of a Lawyer's Conscience? there can, I think, be no other Impediment to the revival of a Practice, which either did, or should, in Reason, have subsisted, equally in either Case. Not to mention the Example of our Judges, on the opening of their Commission at Assize.

The previous Oath, if we, seriously, mean the Extinction of pernicious Habits should, in the fullest, and most solemn sense be administered, on the Defence of every individual Cause: and by the introduction

duction of a subsequent \* *Defideratum*, his mind would be fully qualified to take it. But an evident Breach of his Oath, by palpable quibbling, should be subject to exemplary Fines. By a rigorous prosecution of this Measure, the frequency of wanton and knavish litigation, would (probably) soon subside; and, even the reduced Number of Attornies, *directed by the Statute of our first Edward*, would be amply sufficient for a Kingdom, *then*, tending at least to Happiness.

The Science of the Law, besides its mere *Routine*, and a ready knowledge of the Statutes, appears evidently to consist, in a species of *recorded Casuistry*, couched in, and to be collected from, the innumerable Awards

\* The uniting *Equity and Common Law*, by Declarations, and Examination of the *Parties* on both sides *upon Oath* previous to final Trial, in all but *Criminal Causes*. It may often be the Means of punishing an intended Fraud, through the corrupt Sides of Perjury, (which is, I think, far from being an Objection to it) and can involve neither Injustice, Hardship, or Inconvenience, *Criminal Prosecutions*, being exempted from this Rule.

wards and Decrees of former Judges, even from the remotest Periods of English Jurisprudence. And these, however discordant, they *must* often be; from the distinct Interest, from the Prejudices, and from the foreign Dependence of ecclesiastical Judges. Yet, in their Aggregate, constitute what is with such venerable Mystery termed, the *Common Law*. Tho' if it were not a kind of Heresy to hazard such an Opinion; I should, I candidly confess, rather annex that sacred Appellation; not, *vaguely*, to all Law, that is not positively *Statute*, least, from the probably numerous inconsistencies in these Records, its solid Estimation might be endangered. But, to the *real, immutable, glorious Palladium of British Liberty*, to our Juries, and to our uncontroled, or even influenced *Right*, to return, on every possible Occasion a \* GENERAL VERDICT. After that

\* If the inestimable Privilege of English Juries, is not merely Ideal, they may very consistently acquiesce in every Proof of the Facts alledged, yet, if those Facts in their Opinion, involve no Guilt, they are clearly bound by

that patriot Point, to such prescriptive Rules only, as relate solely and immediately, to the Subsistence, the Security, the *Resources*, and the public Convenience, both of the Kingdom at large, and of its Inhabitants, *when considered*, in their respective relations and Degrees. From the minutest Infringement of such parts of our *Common Law*, as *steadily*, relate to these essential Benefits. *Let every sacrilegious Hand, abstain!* I would *here*, applaud the manly Sentence!

The above Decisions, however, abstracted in the famous *Year-Books and Reports*, are what our Counsel quote as Precedents, and if not precisely in point (*altho' their Latitude is evidently pretty extensive*) they are, by the Aid of Impudence and Analogy, wrested and tortured, until they fit their Client's Purpose. But, for their Reputation, it is upon *the whole*, highly respectable: even, if barely considered, as a Compilation of

by their Oath, and justified by the Spirit of our *Common Law*. *In the same Breath*, loudly to pronounce their Peer NOT GUILTY.

historical



historical Vestiges of British Jurisprudence. Or, as it may afford, specific Rules, for the Protection and Encouragement of such Privileges, Trade, or Property, as may be, *to this Day* accounted, immediately beneficial to the Community. Thus far, their Authority and Estimation, continue unimpeached.

For the enormous body of our Counsel; I will only say; such infinity of Candidates such Efforts, and recompenced with such Rewards! cannot, I confess, but be often productive of Abilities. Though it may well be doubted, if the ingenious Defence of a just, but intricate Cause, is not more than ballanced, in the cunning it is attacked with, by Chicanery, Evasion, and expensive Delays, under the specious Mask, of legal Forms, and (often ruinous) Caution. It is likewise to be doubted, if the final Decision of common Causes, in a limited time, from the bare Testimony of Witnesses upon Oath, together with a *general, intelligible, and brief Exposition upon Oath*, of the Facts and allegations on

D

both

both sides, in Opposition to technical Language; and the *joining Issue* on perhaps a *single* point of *Law*, without Reference to the general Merits. It may, I say, well be doubted, if under such a Statement, a Jury of Neighbours, somewhat on the Plan of Alfred's *Hundred Courts*, with a Chairman of plain Sense, properly authorized by Legislature, would not in general decide, with an \* unbiassed Truth and Precision, worthy of being confirmed in the Courts above.

What is here proposed, cannot preclude the Opulent, from Application to the Judges appointed by their Sovereign; who are indisputably the only proper ones to decide in Matters of real importance, and where the Issue might be supposed to bear some proportion, to the Charges of a Suit in these expensive Courts. But, in *common*

\* Unbiassed by the venal pleadings of Barristers, who, under these Regulations would be useless: when, from mutual Declarations and Examination of the Parties *upon Oath*, added the corroborating Testimony of Witnesses, the Jury would be too fully informed, either to need their perverted Explanations, or to be misled by their Sophistry.

*Causes*

*Causes* this is so very far from being the Case, that I should, I think, be justified in affirming, that there is at this Hour, more than a hundred thousand pounds due to Attornies, by Debtors actually in Custody for Sums, which were originally, in *themselves*, very inconsiderable. And that a very *serious Number* of useful Subjects, are detained in Prison, to their own irrevocable Ruin, in *every Sense*, and to the manifest Detriment of the Community ; almost entirely, on this reproachful Account,

Were constitutional, monthly Trials revived, at *County Courts*, as anciently established ; and their Competency extended *Cæteris paribus* to the Equivalent of what they were competent to, at the Time of their *first* establishment, we should be far nearer the Institutions of the great and good *Alfred*, and to the real Spirit of our *Common Law*. But there is another Article, well worthy of our most serious Enquiry :—how happens it, that Criminal Prosecutions, where even Life, the greatest possible Stake is at Issue, should, after the

mere Commitment of a Justice of Peace, and the hasty Ceremony of finding the Bill, be, as they notoriously are, begun and ended in the rapid Course, of but few Hours, and with *comparatively*, no expence, while the Prosecution of so very inconsiderable a Stake, as five Pounds, is, as notoriously attended with *at least* fifty pounds Expence, to the losing Party. The Reasons alas ! are obvious, but I defy any man to assign a good one, why the Process for small Debts, should not be to the full as summary and unexpensive as that for Life ? Would our Legislature enforce its being so, it might very constitutionally be accomplished, by the *general* revival of *County Courts*, and by establishing their Competency to Trials of *thirty Pounds* ; which, the comparative value of Money, and other concurring Circumstances, would well warrant, leaving those to the amount of five Pounds, to the Decision of *Neighbour Juries*. But, the Bane of all liberal Commerce, is the odious Discrimination between *Equity, and Common Law*, to the  
entire



entire Disgrace of the latter, and but too often to the Ruin, of the honest, open minded Individual: while it secures invariable Success and Impunity, to the cautious, cunning, and often knavish Churl.

It may be an interesting Question to consider, if our Legislature has not been at all Times too much influenced by the interested Counsel of our Law Sages; and, if it has not, too long, suffered that to be divided, which, unsophisticated Reason, actuated by the genuine Spirit of our Constitution, would liberally have conducted, *Hand in Hand*. For, it appears evident, to my Understanding, that with timely and explicit Declarations, and, with \* Examination of *Parties upon Oath*, previous to  
final

\* Our Courts of Equity, *with this essential Power* (by which they are *now* exclusively distinguished) either are, or, are *not* constitutional, if the latter, they should be totally abolished. But, if they are constitutional, which, I believe, scarcely admits a Doubt; the obvious Advantage this Power gives them over all other Courts of Judicature, for the effectual Investigation of legal Facts, evidently entitles every British subject to request the  
uniting

final Trial. After hearing Witnesses, and attending to the *general Merits* (on which *only* substantial Justice, and the essential Value of Juries can depend) it seems I say impossible but, with a recapitulatory Charge from *whoever presides*, twelve honest Britons upon Oath, sitting in Judgment upon their Peer, should be fully competent to, *at once a legal and an equitable Decision.*—A *Desideratum* somewhat to this Effect, is rather hinted at by Sir William Blackstone, in his excellent Commentaries.

I speak here to *Common Causes*, not to the complicated Discussion of *Tenures*, with their Conveyance and Inheritance : whose

uniting so beneficial a Power, with the *Common Law*, in all but *Criminal Causes*. That favourite and venerable Law, would thus acquire the only Requisite it seems deficient in. And, Trials in Equity, would receive on their Part, that *final sanction*, which every Briton believes to be his Birth-right, and which, besides adding to their popularity, would surely strengthen any *Decree* : THE CONCURRING VERDICT, OF AN ENGLISH JURY ; which, no Chancellor, however conscious of his *own* Rectitude, or tenacious of his Prerogative, could in Reason, wish to withhold.

Intricacies

Intricacies often puzzle the most learned of the Profession ; and will continue to do so, while they are held and supported by Principles, which should have shared the Fate of those Feudal Customs that gave rise to them. But, in the present Mode of trying the most ordinary Causes ; a single point of Law, on which the honest Attornies have, as they term it, *at length* joined Issue (and which, besides the *expensive Grimace* that precedes it, makes them, eventually the Triers of the Cause) is, *what only*, Juries are requested to decide upon : and what, a cunning Plaintiff, is generally sure of proving. But, should your Counsel be directed to alledge, the *compulsive Necessity* of the Transaction at Issue, or even the most evidently implied Defeasance, it has nothing, he will say, to do with the present Trial at *Common Law*, you must obtain a new one (in Equity) although the losses, already sustained in this, have disabled you for supporting either the Charges or the Delays of it. Whereas, if an intelligent Jury, had been as fully informed of the

*Equitable*

*Equitable Merits, by general Declarations and examination of the Parties upon Oath*, as of the merely legal Facts, established by Witnesses, and its final Decision demanded *upon the Whole*, it would have been qualified so to steer, between Equity, and an unguarded, or constrained Act, as, by a *general Verdict*, confidently to pronounce *substantial Justice*. On the other hand, a *new Trial* may be play to Lawyers, but it is Death to those who pay them. So Æsop observed two thousand years ago.

Yet even these salutary establishments, would prove inadequate, effectually to remedy the *enormous Drain* above alluded to. Unless Attornies, who are both its Cause and receptacle, be first reduced: and under severest penalties limited, not positively to fix *per County*; for, since our first Edward, and our sixth Henry's Time, more, I readily admit, may have become necessary. But, can it be possible that in the proportion of twelve *per County*, those of York and Middlesex might not be fully supplied, by what our smaller Counties would gladly spare,



spare, from so very ample an Allowance: and I am willing, for the Credit of humanity, to believe, that, (with great attention in selecting them) *even this Profession* might (from so very extensive a Body) afford six hundred Men, both of Intelligence and Probity. These Regulations, with the total Abolition of that Reproach to a free Country, *Imprisonment for Debt*, would leave, even these comparatively few Attornies, leisure sufficient for their own Concerns, and would at the same time, better encourage and enable an encumbered Nation, to support its really necessary Burthens with Content.

If, notwithstanding the Arguments that I employed in a former Tract, to combat the pernicious Practice of Imprisonment for Debt, it should be still urged, that it is beneficial, and even necessary, to Commerce, though I am fully persuaded, it is *essentially* so, to that *only* of Lawyers, there would yet, on this *score* remain for our Consideration, an Object of the most shameful abuse: and, which cannot but be highly

E offensive

offensive in a free Country, where *legal* impartiality and equality, at least, under given Circumstances, may well be deemed the *sine quâ non*, the very constituting Spirit of civil Liberty.

The Grievance I allude to, however apparently Illegal, (for it consists in a Discrimination, not merely invidious, but to the highest Degree oppressive) is yet derived from, and sanctified by the Authority, of our very first Courts of Judicature. Though that Sanction, is, I will candidly suppose, grossly abused by their Deputies. I mean, *in the first instance*, the total Preclusion, throughout every other part of England, of that important Privilege, which *many* Inhabitants of the King's-Bench and Fleet Prisons are indulged with, which, by giving some *Remission* to their Confinement, at the same time, much conduces to the Health, the Industry, and often to the Release of many valuable Subjects. I say many, for, even in these Prisons, the Power of dispensing, and of selecting Objects for the Enjoyment of this Privilege, is too much left

left to the Caprice, and interested Agency of the most improper Judges.

Admitting for the present, that Imprisonment for Debt, may be reconciled to the Theory of our Constitution, and with our Ideas of Liberty, we will presume that, as this Privilege was probably granted as a Palliative for the qualifying so very harsh a Remedy; and, that the Parties imprisoned, might appear to be so, merely and solely, for the Recovery of a just Debt; they were, during *Term Times* (on proper Application, on the payment of certain Fees, and after giving full and sufficient Security to their Keepers for their return at Night) permitted by a *Rule of Court* every Day to be at large, under Plea of employing that Time, for the Settlement of their Affairs.

The Use commonly made of this Indulgence, is foreign to our purpose, nor would any Man of common Humanity wish it, in any sort circumscribed. But, it is likewise impossible that any Man judging with common Equity, can think it just to

with-hold this humane Privilege, from *whoever* in these Prisons, complies with the prescribed Rules. Nor, upon the same principle of impartiality, should any Individual in these Prisons, on Compliance with the *legally* required Terms, be, on any pretence whatever denied the Benefit (*in its fullest Sense*) of what are there called, *the Rules of the Prison*; that is, the permission constantly to reside, and to exercise their Trade out of the Prison, but, within the Limits of a prescribed District.

Yet is this, so very far from being universally the Case, that, the Keepers of these Prisons, or their Deputies, have been frequently known to extort sums, even to the unconscionable amount of one fourth of the whole Debt, for an Indulgence which has been (for no good purpose) ostensibly committed to their sole Discretion; and which, if, under the premised, and *justly* requisite Security, and without *illegal* Fees, it was indiscriminately extended to all that wished it, and could comply with the Conditions, could be attended with no possible  
Inconvenience,



Inconvenience, and would save hundreds from perishing, and thousands from drunken Diffipation, and in the end, total Ruin.

If this partial Distribution of Benefits, which should, in these Prisons, indisputably be general, appears, as it must to every reflecting Mind, a heavy Grievance, by what adequate term shall we express the Injustice done to the Inhabitants of the remaining Gaols of this extensive Kingdom, who, though born under the *same* Laws, ready to give the *same* Security, and *likewise* imprisoned only for Debt, yet are desperately mixed, and in every sense, except the hope, *some way*, of speedy Relief, confounded even with Felons, whose Offence (*if we may judge by its Punishment*) is deemed by our Legislature, *less* injurious to Society; for, the unhappy Debtor, may be, without *Remission* confined, perhaps for Life, within the same hopeless Walls: unless by *Habeas Corpus* he is at enormous Charges removed, to an expensive, a distant (and perhaps to him) an unknown and Friendless part of the Kingdom. Is this Equity,

Equity, is this Freedom? or does it any how consist with the liberal Dictates of either?

For the absolute Illegality of Imprisonment for Debt; I was ever too conscious of the exceeding Intricacy of that important Question, even *to think*, of positively affirming it. I am however, perfectly convinced of its gross impolicy, in Relation both to Morals and to Commerce, of its glaring *inconsistency with many other civil Regulations*, and above all, of its manifestly clashing, with the liberal Principles of *Magna Charta*, and with the free Spirit of our Constitution. But,—as it is at least a very *dubious* Point, and as the above Privileges have by long Usage proved, both their Utility and their safety, what possible Argument can be urged, even by the most unfeeling, against the general Extension of it, upon Conditions as nearly similar to, *what the above should be*, as can be accommodated to the Distance and Situation of the respective Goals? To doubt the Expediency of this Measure, would be unworthy  
of

of English Benevolence ; to oppose it, little better than Savage and unprofitable Tyranny.

Again ! to check the feelings of humanity, and effectually to encourage brutal ones ! shall, either a benign Creditor, or one, who is for some years unavoidably precluded from applying for his Debt be, by that involuntary Omission or humane Indulgence, by Statutes of Limitation totally deprived of his due ? whilst, in *Contradiction to our natural Character*, a revengeful Churl shall be permitted, perhaps for Life, not only to triumph over his fellow subject's Liberty, but to be still accumulating *Interest* upon his Debt. Which, even in rigour, these sufferings might, surely, discharge. *Such* cruel absurdities ! must ever be the consequence of such modes of recovering a Debt.

I appeal to Reason, to Candor, to my Country, and to its Legislature, for the Truth and cogency of these Arguments. For, it is an almost self-evident proposition that, when the *real Representatives* of a free Nation, constitute one great Branch of its Legislature (*if they are truly uninfluenced*) the  
Statutes

Statutes that they enact, must, of necessary consequence, characterise the Disposition of the People. That, in their *Process*, many, and, in *themselves*, some *few* British Statutes, certainly do not ; these glaring Abuses, and irreconcilable partialities, but too clearly prove, and forcibly persuade me, once again to urge, that, those who have the execution of our Laws in Charge, are, on every account and consideration, from their inveterate Habits, from the contingent Interest of their Places, in Justice, good Policy, and Common Sense, to the last Degree improper Persons to be consulted ; and should be as little as possible, any how concerned, in the moral and humane Business of their framing. Nor can they ever be expected to Characterise the *English Nation*, unless they are the *uninfluenced Act*, of perfectly liberal and Independent Men.

But, still more forcibly to illustrate, many of the preceding Observations, if we reflect upon the celebrated Answer of the Barons, in our third Henry's Parliament at Merton, *Nolumus Leges Angliæ mutare*, and  
contrast



contrast its manly steadiness, with the pitiful Mummery, that was contrived some Centuries after that Period, to disguise, and *obliquely* do away, so many Parts of these respected Laws; could the Pencil of Detraction itself more accurately delineate, either the damning Influence of Lawyers, or, their inherent, characteristic, *wanton* propensity to quibbling! instead of honestly and openly, advising the Abolition, of such Laws as were, (however sanctified by Time) no longer compatible with that *Transfer of landed Property*, which an increase of Science, Trade, and Riches, with many concurring Circumstances, must of Necessity involve; they adopted the wretched Expedient, of *evading* these sacred Rules! and that, by such bungling, contemptible *Fictions*, such warped Analogy, such infantine *Make-believes!* as Boys, three years from their Nursery, would recollect, and be ashamed of! The Question is not, if these *Fictions* were, *at any rate*, productive of the Advantages required; but, if they have not fixed a dangerous Precedent,

F against

against the possibly permanent Validity, of any Law that they would (without Consent of the *entire* Legislature) wish to evade ; and, if a diametrically opposite Procedure, a liberal, direct, unequivocal one, would not, instead of subjecting our Laws to Obloquy, have, (with the same Benefits to the Community,) transmitted them to future Ages, with that unfulfilled Dignity, that should be ever inseparable from our Ideas of British Jurisprudence.

We might then in just admiration of their Purity and consummate Excellence ! truly have exclaimed with Leibnitz, when, among the various Solutions to his famous Problem, he distinguished the masterly and comprehensive Outline of a Newton.---The others I confess have answered, but *here*, I manifestly view in every Part, *the steady Traces of the Lion's Paw.*

As matters now stand ; in lieu of this noble Exclamation, it is impossible for the gravest Censure, to apply more pointedly to the lamentable Condition of the British Laws, than those Lines, however ludicrous,  
which

which *Ariosto* puts into the mouth of his mad *Orlando*, on the Subject of his horse that he is about to change ; and which our elegant *Prior*, in his *Alma*, transfers to that of *Harlequin* : who, after furnishing him out with every commendable quality, frankly confesses,

One Fault he had,—a Fault, indeed !  
And what was that,—the horse was dead.

The virtual Death's wound of our Laws, which are, in general, the Master-piece of human Wisdom ! is but too evidently inflicted, in their perverted and rapacious Process. And I could quote *and prove* repeated Instances of its Plunders upon a single Person, to the enormous amount of more than twenty thousand Pound ; not one of which, but would disgrace the Jurisprudence of a Cadi of Bagdat, or Aleppo.---Apply for Redress, and you are again insulted, with the Mockery of Reference to the same vitiated Formalities and extortionate Agents, that have already, well-nigh wrought your Ruin.---Will they restore the

Loffes that they have as iniquitously as demonstrably occasioned ? or can they compensate, for a consequent seven years privation of Liberty ?---when they *evasively* ascribe it to accidental and specific Circumstances, are we not justified in retorting ? that, their boasted Impartiality, their Justice, and their Equity, to quadrate with the Theory of our glorious Constitution, should, to an honest and Loyal Briton, be **EQUALLY OBTAINABLE, IN EVERY POSSIBLE CIRCUMSTANCE OR SITUATION.**

P O S T-



## P O S T S C R I P T.

THE Author of this little Tract, is by no means vain enough to imagine that, to those who have reflected as attentively, upon this important Subject as himself, he is likely to convey a single new Idea. All I could expect to do for them, is, to have collected in one clear point of View, many dispersed and clouded Objects, which, when fairly exposed to their Inspection, may at the same time be highly interesting to every true lover of Liberty: and that, I hope, comprehends little less than the whole Mass of my Countrymen, altho' the keen pursuit of Dissipation, in an Age (rather cumberfomely) teeming with it, may possibly have diverted many of them, from any serious Reflections, upon the Security of *that only*, which *should* give Zest to their Pleasures, or *can* ensure permanency to their Possessions.

As

As we besides, seem to be now existing at the very Crisis of an *Æra*, that breathes nothing but Discovery and Reform, it will be, surely, prudent to avail ourself of such well disposed Times, for the attainment of *only important Objects*, least through Delay, or like *Corisca*, in the Fable, by trifling with our good Fortune, we may be in our Turn, left to regret the Transiency of so favourable a Period.

Should I have done no more for my fellow Countrymen, in this short but zealous and well-meant Labour, I shall feel some Satisfaction, in the having contributed at least *my share*, towards the Redress of real Grievances ; an Example which, *if in his respective way*, every Individual would resolve peaceably and constitutionally to follow, there could be no Doubt of our Success.

The *long neglected Plan*, that I had many years since, the Happiness of communicating to the Public, for the Reform of their Representation, in the Common's House of Parliament, far from damping the Ardor  
of

of my Hopes, upon the present Occasion, rather flatters me with the pleasing Prospect, of their being *both* soon realized.---If the Bantling lay eight Years dormant, and if even the Identity of its Parent, was in a Degree obliterated; it was at least on its awaking, cordially fostered, and its healthy Vigour, has been, from that Period so nobly nourished; that, tho' barely fourteen Year Old, I should little doubt, from its present large Proportion, and conciliating Aspect, but it will in due Time, secure its own Success: and with that, the future Happiness, and lasting Liberty of our Country.

There are, however, two *fundamental* Points, of which we cannot be too tenacious in our pursuit of this important Event. First, *the total Abolition of rotten Boroughs*; which indeed, was the *Sheet Anchor* of my original Plan: and tho' *Junius* founded his Objections to a Reform, chiefly on the impossibility of ascertaining "at what point you must stop, at what point the Mortification ends"---on sight of my Proposal for  
the.

the *only* Expedient that can at once involve, both an *uninvidious and a Radical Cure*: the Abolition of Constituency \*, *alike in every Borough*, with a general Transfer of the Votes of every Individual, to their respective Counties: who should alone send Representatives to Parliament, each in its *due* Proportion. On sight, I say, of this, he expressly gave us an Extract of his Letter to Mr. Wilkes; with the sole View of *doing away* every objection he had made *in it*, to a *Reform*, and of candidly acknowledging that, “ This Argument was, fairly and completely answered.”---So much for those, who disingenuously or ignorantly *mutilate* the letters of Junius, and *affect* to overlook *his own* pointed remarks upon them.

For the second *grand point*; that of universal Suffrage, tho’ it was ever my *ultimate* wish; I had not, I confess, *then*, Confidence enough

\* London and Westminster are, in my second Plan, rated as Counties; which their importance and Population, well warrants. And *household* Servants, being little affected by Taxes, and seldom permanent in *any* County, may perhaps be, while in that State, justly ex-



enough to propose it: *trusting*, that the main object might be more easily obtained, and the whole appear less Visionary; by keeping in some sort, to the *Spirit* of our ancient Usage; and fixing the Qualification for Constituency, to the Proprietorship of a Freehold of such Extent, as might, *three Centuries and half ago*, have been rented for, *two pound Sterling*. A lapse of fourteen Years, *has happily opened the eyes of Men*; and for myself, I cannot be said to have changed my *Opinion*, altho' I have gladly *altered my Plan*, to the more extensive Purport of my *first ardent wish*, and have two Years since, delivered it to the Public.

If we accept of a Reform, on less than these Conditions; we, in the *first Instance*, but botch and tamper with our Constitution, for a *precarious*, and at best a *trifling* Benefit. In the *Second*; we with-hold from our fellow-subjects, that, which in *Equity*, is their due. For, by what Reason, or Rule, but that of Tyrants, hard Necessity! can you, from *unrepresented Subjects*, extort obedience to your Laws?

G

But

But above all, when this important Matter is debated, let us avoid intrenching ourselves upon untenable Ground.---I would found my Defence on *Equity alone* ; can a better Plea than that of Reason be urged to an enlightened People ?---The *legal* Claim of universal Suffrage, will be, I fear, but too justly argued as incompatible with that unhappy State of *Villainage*, to which our Lordly Conquerors had reduced us ; and from which we were very far from having emerged in January 1265 ; when Simon de Montfort, Earl of Leicester, (a wicked Instrument, and with Intentions, widely differing from the glorious Benefits, that it was followed by) *first* called the Commons of England to Parliamentary Constituency, the Plea of our sixth Henry's Limitation Act, will be at best, but a *contested* Inference. To be successful in our Debate, let us reason from what we *now* are, and what our *present* Weight, in the great Balance of Civil Policy, *fully entitles us to*. Not from the abject Condition, in which we were five Centuries ago : least  
that

that Condition *alone*, involve unfavourable Conclusions.

Our Constitution, our Liberties, and our Laws, were not (*by Revelation*) imparted to us, *entire*: they gradually encreased with the knowledge of ourselves; and *that* with the growth of our Importance. Our Rulers and Sub-Rulers, by Turns experienced their own Imbecility, if unassisted by Vassals, who were at length, justly dissatisfied with the humiliating State. The latter, soon, by their Industry and adventurous Spirits, acquired Riches: they realized those Riches, by the Grants and Alienations, of the proud and idle. By Alliances and personal Merit, even Nobility was *now* often obtained. The Discovery of the Compass, the Invention of Printing, the consequent Promulgation of Science, and the Inundations of Wealth, from a New World (*which must of force ultimately center with the cultivators of Arts and Commerce*) cancelled (in less than a short century) all but, *Titular* Distinction.

From that auspicious Period;---with our Equality, our Right in Equity commenced.

Its Growth was rapid, and, like that Ornament, and true *Emblem* of our Country, the well-rooted and far-spreading Oak, hardy Native of the same generous Soil. It is but strengthened and confirmed, by the Storms and Resolutions of a second Century.

If a Blot so palpable, was not hit 'till the Year 1769, nor the Plan formed on it, published, 'till two Year after : it is yet no Impeachment of its Existence long before. I shall be the last Man suspected of Rapaciousness : yet, when the *Salus Reipublicæ* is concerned, I would, like *Hotspur*, wrangle for a Straw. Let us not then, be lured, as *Esau* was, to fritter away our Birth-right ; nor, be prematurely tempted, to an insidious and artful *Compromise*, to accept one Atom less, than that which is our Due---THE TOTAL ABOLITION OF BOROUGH REPRESENTATIVES ; AND UNIVERSAL SUFFRAGE.

Upon this unequivocal and firm Foundation, every *Plan* must be good : and for my own, I am no further attached to it, than,  
till



till a better shall be suggested. These are the Outlines of it; and, that published, early in \* 1771, (full eight Years prior to the Yorkshire Meetings) differed from it, *only*, in limiting the Constituency (though with much Regret) to Freeholders, as above described.

1st. Every

\* Had this Plan been adopted at the above Date, we had probably been *now*, on the most Parental Terms with *America*; those therefore, who so severely reprobated Lord North's Conduct, should recollect that, by leaving so many Boroughs at the Disposal of a pernicious Minister, after the serious Warning which accompanied my Plan, and *that*, for eight *entire* Years; they were not quiet blameless of the fatal Consequences that attended their Neglect. I *then*, plainly foretold the *worst*, though that, I trust, may be yet averted. The present Minister well knows, I could say more, upon *that* Subject; but, not with *his* additional Members:—*non tali Auxilio!* how indeed, in Times like these, can we be dreaming of *Patch-work*; or, how can any one, reflecting on the *bare-faced Support* of Lord North's Ministry, be one moment surprized at *his* steady opposition to a *Reform*; he is but too sure, *that no bad Minister could in that Case, be long employed*: and perhaps, not quite Hopeless, of again returning to his Post. Is it possible that, knowing so sure a way, to prevent so great an Evil, we should neglect it? Or, that the joint and *laborious Efforts* of Messrs. Fox and Pitt, leading, a *then* glorious Opposition, although at length Victorious, should be forgot.

1st. Every Individual Man in the Kingdom, to be, annually, registered *as a Voter*; each in one Parish only. And, however extensive his Property, to Poll for that County only, to which his Parish belongs, and at the Hustings that Parish is annexed to.

2d. A Parish Officer, commonly resident, to assist at Elections and identify his Constituents.

3d. The Candidates for each County, being declared a full fortnight before, and the Day of *general* Election, *then* fixed, the *whole* to be terminated in six Days, and every Member returned, as soon as the Poll can be cast up.

4th. The Number of Hustings to be proportioned to the Population and Extent of the Counties, and, their Distances adapted to the convenience of the Inhabitants, who, having little way to go, should all, (as in cases of Jury or Inquest) be obliged to Poll distinctly for the full number of Representatives allotted their County,

ty, and no Election to be valid without an *actual* Poll.

5th. It being both just and Constitutional, *that the Proprietors of the Soil*, should be *still*, distinguished: every Freeholder of *30l. per annum* (which I suppose analogous to two pound sterling, in our sixth Henry's time) to be registered at his County Town. Their Prerogative should be, to approve and declare Candidates, and to decide impartially on their Qualifications, which, if *legal*, should make them unexceptionable: and as a more solid Privilege for this Rank, a Power should be vested, in a Majority of the *complete number* of it, in each County, to vacate the Seat, of any of their own Members, *if*, on or after the acceptance of Place or Pension, their Conduct was disapproved. *Others* to be chosen as before. This (which I trust, would seldom happen) would obviate the Inconvenience of *necessarily vacating*; and yet, more effectually bind the Representative to his *Public Duty*. Since a dismissal in the above form, would both imply a *just* Censure, and preclude  
his

his re-élection during the same Parliament.

6th. The Proportion of Representatives for each County, to be ascertained by our Legislature, in joint Conformity to the Extent, Population, Riches, and Commercial Importance of the specific Counties. Due attention being paid to those, who, though chiefly resident in the Capital, yet having their landed Property *elsewhere*, should be *registered* for their respective Counties. If, notwithstanding the short Process of even a general Election, room should still be left for false Votes, that is, *repeated* ones; it should be punished as Perjury. Nor, should unregistered Voters be admitted to Poll; for, it is their own Fault, if, (by a kind of negative Vagabondship) they are thus unrepresented: in London, every Man should Poll in his own Parish; the Officer then, knowing his Complement, and their Names, cannot well mistake; although not acquainted with every *Person*. Hustings of Course in every Parish.

I would



I would clearly prefer Representation by *Counties*, for, besides that their Limits are, *already ascertained*, any smaller Divisions might be more easily monopolized; and their *new* Boundaries, subject to Cavil and Evasion. When every Individual in a large County, Polls for *every Member*, it must be *long*, ere they are effectually corrupted: on this account, the more extensive they are, the safer. Yorkshire and London, might alone suffice to make a bad Minister despair of success, in so iniquitous an attempt.

Were this Plan once adopted, and the Members, (which should not exceed the present Number) finally proportioned, and allotted to the Counties, nothing, *literally*, would remain, but to register the People, and to assign the proper Hustings. I can therefore, *myself*, conceive; no plan, either less exceptionable, or less *confused*. Yet, should a happier Planner, *upon the same liberal and broad Basis*, produce a more successful Effort; I would gladly and *cordially* applaud it. Amply flattered, in having

H

been

been the first Propofer of *that only*, which can secure the Fabric—*An unequivocal and firm Foundation.*

I will now conclude this Postscript, with my sincere Declaration of the most profound Esteem and Respect for the *Common Law* of England. But there is yet, another Law, which Candor will ever declare, to amount, even to that! it is implanted by Providence in the Breast of every good and reasoning Man: it is the Law of EQUITY. And though it be not on every Occasion, so invariably precise and ascertainable as the former, nor *alone* so fitted to the Regulation of *Individual* concerns, yet, when asserted by the GREAT LEVIATHAN, in Defence of his natural and just Title, to doubt of its prevailing in the End, would be to depreciate the Spirit of nine tenths of our Countrymen, and to dispute the Candor of the Rest.



F I N I S.

